

Example essay questions with suggestions for a good answer

Chapter 6 – Interests in the family home

‘Parliament has shown itself unwilling to intervene to legislate for cohabitation reform. In the gap left by Parliament’s inaction, the courts have been forced to step in to create a bespoke regime for the division of ownership of the family home when cohabiting relationships break down. The resulting flexibility in the court’s approach has, however, come at the cost of legal certainty.’ Do you agree?

- This is a subtle and not altogether straightforward question which requires a close, careful understanding and analysis of the use of implied trusts in the family home context.
- Begin by explaining the role of implied trusts in the event of cohabitation breakdown. Why do they arise? How are they used? Note the problem of applying strict trust/property principles in the family context. Draw on Hale’s dicta in *Stack v Dowden* (2007) here.
- Reflect on calls for Parliament’s intervention and failure to do so.
- Explore the need for a regime that is sensitive to the family home context – what does this mean? Why should the law bend to the context of home? Consider Gardner’s work in this area.
- Note the rejection of resulting trusts in the family home context and the primacy of the common intention constructive trust. What are the problems with this? Flexibility but less certainty as to outcome.
- Briefly outline the applicable principles stemming from *Stack* and *Jones* (*Jones v Kernott* (2011)), noting the distinction between sole and joint ownership cases. Unpack the two routes under *Rosset* (*Lloyds Bank v Rosset* (1989)): *Rosset 1* and *Rosset 2*. Unpack how the presumption of beneficial joint tenancy in joint cases arises and can be rebutted: Hale’s paragraph 69 factors.
- Explore quantification and the role of imputation. Consider divergent views on imputation from the leading cases: *Stack*, *Jones*.
- Draw together your thoughts, returning to how far legal certainty has been the victim of the flexibility of approach.